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STAFF REPORT: PERMIT REVOCATION REQUEST

APPLICATION NUMBER: **R-A-3-MRB-03-043**

APPLICANT: **CALIFORNIA DEPARTMENT OF STATE PARKS (DPR)**

PARTY REQUESTING
REVOCATION: **CITY OF MORRO BAY**

REASON FOR
REQUEST: The City of Morro Bay is requesting that Coastal Development Permit A-3-MRB-03-043 be revoked on the basis that DPR intentionally provided inaccurate, erroneous or incomplete information to the Commission related to notice requirements, historic resources, sensitive species, tent camping, coastal view impacts, tree removal, Day Use Area impacts, and inconsistencies with the parks' General Plan.

PROJECT LOCATION: Morro Bay State Park, Morro Bay, San Luis Obispo County

PROJECT DESCRIPTION: Rehabilitation of an existing campground including realigning campsites and entrance station, rehabilitating and retrofitting 3 comfort stations to ADA compliance, removal of non-native trees, and restoring campground area with native trees and vegetation.

COASTAL PERMIT
DECISIONS: Denied by City Council on March 10, 2003; Approved on appeal by the Commission on June 12, 2003.

FILE DOCUMENTS: City of Morro Bay Certified Local Coastal Program (LCP); City of Morro Bay CDP Application File 39-02R; City of Morro Bay Revocation Request File (February 6, 2004); Morro Bay State Park General Plan (June 1988); Appeal File A-3-MRB-03-043.



California Coastal Commission

March 18, 2004 Meeting in Monterey

Staff: M. Watson Approved by:

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the revocation request be **denied** for the reasons given below. Section 13105 of the Commission's regulations state that the grounds for the revocation of a coastal development permit as follows:

Grounds for revocation of a permit shall be:

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

Staff recommends that the revocation be **denied** because, there is no evidence to support the contention that the applicant (DPR) intentionally mislead the Commission by offering inaccurate / incomplete or erroneous information or that the notice requirements were not met. The City allegations and Commission staff responses are summarized as follows:

1. City Contends: The notice of Commission meeting on the appeal was inadequate.

Staff Response: Noticing was adequate. DPR provided notice consistent with CCR section 13111 (c) to all interested parties for which there was the appropriate address information. Furthermore, the Commission obtained copies of the meetings minutes at the City's Planning Commission and City Council hearings along with the written correspondence received during the EIR planning phase of the development. The major issue areas raised in these documents were addressed in the Coastal Commission's staff's report and where necessary by the special conditions of the Commission's approval. The revocation request does not explicitly state how the alleged noticing failure may have affected the Commission's approval.

2. City Contends: The historic significance of the park was not accurately characterized.

Staff Response: No evidence was provided that indicates DPR intentionally withheld information regarding historical significance of the park. The applicant submitted a draft EIR that identified park resources as having potential historic significance. Though Morro Bay State Park and many of its associated resources have not yet been designated as a historic resource, they remain eligible for such designation at both the state and federal level. Mitigation measures have been proposed that would preserve the integrity of the campground resources during the renovation and were incorporated in Special Condition 7 of the Commission approved staff report.

3. City Contends: DPR intentionally mislead the Commission with respect to the presence of special status species.

Staff Response: No evidence was provided that shows DPR intentionally withheld information regarding the presence of special-status species. The applicant identified the presence of special status or sensitive species within the larger state park unit and conducted site-specific



surveys to determine whether their habitat extended to the project site (i.e., campground). Based on information provided by the applicant's representatives and the resident parks resource ecologists, Special Conditions 2 – 5 were placed on the permit approval that adequately protects those species found within the boundaries of the approved development envelope both during and post-construction.

4. City Contends: DPR intentionally mislead the Commission with respect to impacts on the amount of tent camping associated with the renovation.

Staff Response: DPR supplied accurate information on the amount of tent camping. The applicant provided plans detailing the renovation of the campsite parking spurs including expanding the parking sites to allow for multiple vehicles, vehicles with trailers, and larger recreational vehicles. Though the renovation would allow for larger vehicles, it does not expand the number of recreational vehicle hook-up sites or preclude traditional tent camping. The Commission found the renovation project consistent with the public access and recreation / visitor-serving policies of the Coastal Act and certified LCP as submitted.

5. City Contends: Impacts on coastal views were not adequately characterized.

Staff Response: DPR staff supplied accurate information regarding impacts on coastal views. The Commission was aware of the ongoing maintenance activities and tree removal approved by the City under a different permit application occurring at the Park. The submitted plans for the subject project indicated there would be a minimal amount of structural development in the campground (i.e., modest bathroom facilities and entrance station) ensuring that views to and along the coast would be preserved and enhanced.

6. City Contends: DPR provided inaccurate information on tree removal.

Staff Response: There is no evidence to support contention that DPR intentionally provided inaccurate information on tree removal to the Commission. Statements made to the Commission by the applicant provide an accurate count of the numbers of trees to be removed during construction and the amount of tree canopy that will be preserved based on the proposed project plans. Even if there were intentional misstatements, it would not have affected the Commission's decision because the approved project included special conditions protecting sensitive habitat along with proposed mitigation to replant approximately 1,200 trees from a palette of native species. Statements made by the applicant characterizing the tree removal as occurring primarily in the rear of the campground and in the windrow are accurate.

7. City Contends: DPR withheld information regarding the Day Use Area renovation.

Staff Response: The City's request to revoke coastal permit A-3-MRB-03-043 on the basis that inaccurate, erroneous or incomplete data was provided to the Commission with respect to the development of the Day Use area is in error, because this project was evaluated and approved by Commission under a separate action.

8. City Contends: DPR intentionally mislead the Commission regarding project consistency with the Morro Bay State Park General Plan.

Staff Response: There is no evidence that DPR mislead the Commission with respect to the project's consistency with the policies contained in the Morro Bay State Park General Plan. The Plan was approved by the City of Morro Bay in March 1988 and formally adopted by Parks in



June 1988. The various elements of the Commission-approved project are contained in the General Plan.

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- 1. Location Maps
- 2. The City of Morro Bay Revocation Request
- 3. Adopted Staff Report (A-3-MRB-03-043)
- 4. Correspondence

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission grant revocation of Coastal Development Permit No. A-3-MRB-03-043.*

STAFF RECOMMENDATION OF DENIAL: *Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.*

RESOLUTION TO DENY REVOCATION: *The Commission hereby denies the request for revocation of the Commission’s decision on coastal development permit No. A-3-MRB-03-043 on the grounds that there is no:*

- (a) *intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; and*
- (b) *failure to comply with the notice provisions of § 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.*

II. FINDINGS AND DECLARATIONS

A. Project Location

Morro Bay State Park is located in the City of Morro Bay, San Luis Obispo County, California. The park is comprised of two large adjacent parcels, the Morro Rock Natural Preserve and the main park, totaling approximately 2,700 acres. The campground is located in the main park and is generally bound by the City of Morro Bay to the north, undeveloped open space to the east, and Morro Bay to the south and west. Morro Bay State Park lies directly along the shoreline of Morro Bay. The Park includes both highly developed recreational areas (e.g., golf course and marina) and relatively pristine natural areas with high habitat values (e.g., Black Hill, Chorro and Los Osos Creeks, and the Morro Estuary Natural Preserve). Habitat communities of the park include coastal sage scrub, wetland, coastal marshlands, coastal dunes, Monterey pine forest, blue gum eucalyptus forest, and mixed exotic species forest. Unlike the pristine areas identified above, the natural environment of the campground has been greatly modified over time. Most of the vegetation has been introduced and is non-native to the area. Examples of the tree species introduced to the park include eucalyptus, Monterey pine, Monterey cypress, and assorted shrubs.

B. Project Description

The conditionally-approved development consists of a campground rehabilitation including: improving and realigning the campground loop roads, paving parking spurs, constructing three new combination restroom-shower facilities, and relocating the entrance station. Campsites will be given amenities such as tables, cupboards, barbeque pits, and facility hookups. Existing Civilian Conservation Corps park furniture and buildings will be retained and used in the reconfigured campground. Campground paths, restrooms, and shower facilities will be made ADA compliant. To allow more light to penetrate onto the campground floor and to facilitate the campground loop road realignment and parking spurs, DPR proposes to remove 74 mostly non-native, invasive trees. Tree removal will be mitigated by planting approximately 1,200 trees and shrubs taken from a palette of native species. The site of the existing entrance station will be revegetated with trees and shrubs and a series of retention basins will be placed around the campground to filter and infiltrate storm water runoff.

C. Permit Activity

The Morro Bay State Park renovation project has a fairly long project history. The Commission reviewed and approved the Day Use Area segment of the Morro Bay State Park renovation on November 7, 2002. Renovation of the day use area was segmented because it was located



within the Commission's retained permitting jurisdiction. The campground renovation, which is the subject of this revocation request, was reviewed and approved by the City of Morro Bay Planning Commission on January 6, 2003. On January 16, 2003, within the prescribed 10-day appeal period, the Planning Commission's action was appealed and the appeal was upheld at the City Council meeting of March 10, 2003. On March 21, 2003, within the 10-day appeal period, the applicant filed an appeal of the City's action [to deny the project] to the Commission. At the June 12, 2003 public hearing on the appeal, the Commission found a substantial issue existed with respect to the project's consistency with the certified local coastal program and voted to approve the project with special conditions.

D. Revocation Issue Analysis

The Commission may revoke a permit if it finds that inaccurate, erroneous, or incomplete information was intentionally presented by the applicant (in this case, the Department of Parks and Recreation) **and** that complete and/or accurate information regarding the coastal development permit application would have caused the Commission to require additional or different conditions on a permit or deny the application altogether.

Similarly, grounds for revocation exist if there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission **and** could have caused the Commission to require additional or different conditions on a permit or deny an application.

Staff evaluated the merits of the revocation request by analyzing existing file materials, consulting with the applicant, the City of Morro Bay Planning Department and City Council officials, and listening to the tape recording of the Commission hearing on the proposal.

1. Notice Requirements

The City of Morro Bay is requesting the Commission revoke coastal permit A-3-MRB-03-043 on the basis that the applicant did not adequately notice the property owners within 100 feet of the perimeter of the property on which the development is proposed pursuant to Sections 13054 and 13063 of the California Code of Regulations. The City contends no notices were sent to the residences or owners of parcels of property within 100 feet of DPR's project or to the thirty (30) individuals who spoke at the Planning Commission and City Council meetings on the project. The revocation request maintains the Commission and the City violated the notice requirements of the Coastal Commission's regulations and therefore, the Commission and the Executive Director must immediately revoke the permit.

The City's grounds for revocation based on inadequate noticing reflect a glitch in the California Code of Regulations (CCRs). Section 13105 of the CCRs, Grounds for Revocation, state a failure to comply with the noticing requirements of Section 13054 of the CCRs provides grounds for revocation. Section 13054 provides the notice requirements for coastal development permits issued by the Coastal Commission for projects within an uncertified local area or within the Commission's original permitting jurisdiction. Section 13054 requires the applicant to provide notice to the addresses of all residences and all owners of property located within 100 feet of the perimeter of the real property of record on which the development is proposed. It also requires the applicant to notice all persons known to be interested in the application including those that testified or submitted written comments for the local hearings.



The regulations governing the grounds for revocation based on notice did not envision or failed to account for an entire class of coastal development permits that are subject to revocation: appeals. As in this case, the approved development was brought to the Commission on appeal and the notice requirements for appeals are slightly different than those for regular coastal development permits. Legally, the Commission can only require applicants to follow the notice requirements that apply to them. The notice requirements for applications brought on appeal to the Commission is contained in section 13111 of the CCRs. Section 13111 requires the appellant to notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal.

§ 13111. Filing of Appeal.

(c) The appellant shall notify the applicant, any persons known to be interested in the application, and the local government of the filing of the appeal. Notification shall be by delivering a copy of the completed Notice of Appeal to the domicile(s), office(s), or mailing address(es) of said parties. In any event, such notification shall be by such means as may reasonably advise said parties of the pendency of the appeal. Unwarranted failure to perform such notification may be grounds for dismissal of the appeal by the Commission.

In this particular case, the appellant and the applicant are one and the same, so no notice to the applicant is necessary. DPR provided notice to the City of Morro Bay and thus, there is only the question of whether adequate notice was provided to other interested parties. The California Department of Parks and Recreation (DPR) application included a list of 13 known interested parties who had written to DPR and for which they had contact information. Only half of the submitted names had actual mailing addresses, the other half provided email correspondence. The application materials also indicated that roughly 30 persons testified at the City Council appeal hearing, but that address information for these individuals was unavailable because the City does not require attendees/speakers to provide mail addresses. In its January 6, 2003 staff report, the City of Morro Bay Planning Commission indicated that all property owners of record within 300 feet of the subject site had been notified –though the names and address information were not forwarded along with the administrative record. Staff did obtain the meeting minutes from both the Planning Commission meeting and the City Council appeal hearing, which contained the names and corresponding public comments on the proposed project. In addition, the appellant/applicant provided a copy of the written comments received on the Draft EIR and the comments received at the public meeting on the Draft EIR. Again, not all of the written correspondence received contained address information. Commission staff made an effort to notice all interested parties, for which a mailing address was available of the public hearing on the appeal.

Assuming for a moment that the grounds for revocation of appeals were based on compliance with the appropriate notice requirements (i.e., §13111), the question remains, would have additional public notice resulted in testimony or correspondence that could persuade the Commission to attach different or additional conditions or deny the application? In this case, it is unlikely that the views of persons not notified would have had an effect on the Commission decision since the main concerns / issue areas had been raised and received via written and oral comment on the draft EIR and at the local Planning Commission and City Council meetings. These comments/ concerns were made known to the Commission prior to the preparation of the staff report and were incorporated into staff's evaluation and recommendation to the Commission on the application. Additionally, the City's request for revocation does not specifically mention any new information or evidence from persons not notified and thus, it is



unlikely that the additional noticing would have resulted in additional relevant information that may have required further Commission action.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information that would have caused the Commission to require additional or different conditions of approval or to deny the application.

2. Historic Resources

The City lists as grounds for revocation, misinformation regarding the historic status of Morro Bay State Park (MBSP) campground and the surrounding resources (i.e., campground picnic tables, bathrooms, and Eucalyptus windrows). As an example of the inaccurate or erroneous information, the City identified an MRSP Campground Renovation Archeological Mitigation and Monitoring Plan, which concluded that the campground was not listed on either the National or State Register of Historic Resources and that the park lacks the requisite integrity for eligibility to either. Refuting the claims of the Mitigation and Monitoring Plan, the City provided a historic assessment (Morro Bay State Park: "Inventory and Eligibility Assessment," Schultz et al., April 15, 2000) that concluded the Park *is* eligible for inclusion in the National Register of Historic Places. Accordingly, the City indicates that the campground is eligible for registration as a State Historical Landmark and by extension, that the campground *is* a historic resource of the State. The basic gist of the City's claim is that DPR withheld information and mislead the Commission regarding the historic status of the MBSP campground, and, as a result, the permit should be revoked.

The staff report to the Commission did not contain findings on historic resources because the certified LCP does not 1) identify historic resources as coastal resource, and 2) the LCP does not provide for specific protection of historic resources in Morro Bay State Park. Nevertheless, the information the City purports was withheld from the Commission was provided in the Draft EIR, which referenced the Schultz et al., study. The Draft EIR came to the same conclusion as the Schultz assessment that aspects of the Park are eligible for the National Register of Historic Resources and that the campground furniture, a combination building, a comfort station (bathroom), and even some trees are contributing elements to the Park's historical status. As noted in the Schultz assessment and the Draft EIR, the combination building is the most outstanding contributing element. DPR's proposal included retaining this feature in order to avoid destruction of this potential historic resource. Similarly, in order to avoid the loss of integrity associated with other potential historic elements, the Draft EIR includes a mitigation measure to retain 90% or more of the existing campground furniture (tables, stoves, etc). Retention of the campground furniture is seen as a feasible means to maintain the Park's eligibility for the National Register.

With respect to historic trees, it is difficult to determine which trees would be considered as contributors. The Schultz et al., assessment merely states that the row of eucalyptus that "frame" the campground to the south and west could be considered historic. DPR proposed to remove several trees within the windrows for the construction of the new campground entrance and virtually no trees along the southern perimeter. The EIR evaluated the tree removal and the proposed mitigation and concluded that it even with the tree removal, the historical context of the site would not be compromised.

The information provided by the applicant indicates that Morro Bay State Park may be eligible for designation as a historic resource in the National Register. The approved campground renovation with associated mitigation, is sufficient to maintain the context of the Park setting and



to maintain eligibility for the National Register of Historic Resources. Furthermore, there is no evidence to show that DPR hid the information contained in the Schultz et al. report as it was included in the Draft EIR.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information that would have caused the Commission to require additional or different conditions of approval or to deny the application.

3. Endangered Species

The City contends that the applicants provided misinformation on two special status species, the Morro Shoulderband Snail (MSS) and raptors. The City maintains that DPR intentionally omitted data regarding the existence of MSS within the development envelope and failed to follow U.S. Fish and Wildlife protocol surveying standards for identifying this species. With respect to raptors, the City contends that DPR representative, Greg Smith, intentionally misled the Commission at the project hearing by stating that there were no raptors nesting in the park.

In the first instance, information was provided by DPR with the application materials to indicate that three MSS shells had been found within the larger state park unit but outside the development envelope (i.e., campground). State Parks Resource Ecologist, Vince Cicero, provided written correspondence suggesting that habitat suitable for MSS did not exist inside the campground area and that the absence of the species could be attributed to the “paucity of understory vegetation due to the presence of mature eucalyptus and other introduced tree species.” The Morro Shoulderband snail occurs in coastal dune and scrub communities. Mr. Cicero’s correspondence further stated that “soil disturbance and compaction resulting from decades of intensive visitor use have long since precluded any chance of survivability of snails or potential habitat within the campground.” Noting that DPR is the lead agency on the project and the agency responsible for actively protecting and managing the habitat for special-status species, the agency performed additional surveys of the development site to determine if the MSS was living in the park. Commission staff was informed that additional surveys failed to uncover any evidence of live snails or shells within the campground or vicinity. Relying on the information provided by DPR in-house experts, the Commission determined that additional mitigation measures and/or special conditions were not necessary.

The City maintains that the Morro Shoulderband snail surveys prepared by Parks personnel did not conform to USFWS protocol and thus were unlikely to uncover evidence of their existence. They contend that the surveys were conducted in dry weather conditions when the USFWS protocols specifically require they be performed in the rain or immediately following a rain.

Staff notes that during and after rains is the best opportunity to find live specimens, but it has no effect on finding other evidence of snail presence such as the existence of snail shells. The Department of Parks and Recreation surveyed the site once per week over a period of 5 weeks and found no evidence, live or shell remains, of the Morro Shoulderband snail in the campground area. Meaning, regardless of whether it had rained prior to surveying the site, if the Morro Shoulderband snail had been living in and around the campground area, there would have been evidence in the form of shell remains. Again, the absence of any evidence of the snail is primarily attributed to degradation of habitat and ongoing disturbance within the campground. In any event, the allegation that DPR did not follow USFWS protocols regarding surveys for the snail is not a basis for revocation. The basis for revocation is narrow and directed to the issue of whether the applicant intentionally misled the Commission on an



important fact. The revocation procedure is not an opportunity to revisit how research relevant to an issue was conducted.

The City also claims that the Department intentionally misled the Commission regarding the absence of raptor nests in the Park. At the time of the Commission hearing, Park representative, Greg Smith, stated that there are no nesting raptors in the Park. It is not known if there were raptors at the time the statement was made or if there has since been nesting activity as suggested by the City of Morro Bay. Nor is there any evidence that Mr. Smith knew there were nesting raptors and chose to tell the Commission otherwise. In any case, even if erroneous information was given, it would not affect the Commission decision because the Commission-approved project included a special condition that requires monitoring for nesting birds. Prior to removal of any trees, pre-construction surveys shall be performed and If active raptor nests are found within 500 feet of trees proposed for removal, no tree removal will occur in these areas during the nesting season (i.e., between March and August). Further no trees shall be removed if they contain nests that have been or could be occupied in the future by species that are known to return to their nests season to season. In accepting the conditions of approval, the Department of Parks and Recreation has agreed to continue to monitor the Park for nesting raptors and avoid removal or disruption of the nests and nesting raptors as required by the conditions of its permit.

As such, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information supplied by the applicant that would have required additional or different conditions of approval or required the Commission to deny the application.

4. Tent Camping

The City of Morro Bay contends that the applicant misled the Commission with respect to changes in the configuration of the Park and the associated impacts on tent camping. The City's claim stems from a statement made at the Commission hearing by the project manager, Jim Quayle, that the project would not impact tent camping and that most of the parking spaces would be less than 35 feet. The City argues that with the park renovation, only 5 spaces will be dimensioned for car-tent campers (i.e., 25 feet) and that the new park orientation would permit a lifting of the size limit on recreational vehicles.

At the June 12, 2003 Commission hearing, in responding to a question from the Commission, Mr. Quayle stated that "most of the parking sites will be less than 36 feet." This is a true statement. The Department of Parks and Recreation submitted project plans with the proposed campground realignment and creation of paved parking spurs. Staff noted in its June 12, 2003 report to the Commission that Morro Bay State Park had 135 existing overnight campsites but only 20 paved parking spurs. The primary goals of the renovation project were to improve year-round use, protect natural resources, and prevent soil compaction by providing each of the remaining 115 campsites with its own designated parking. The majority of the sites are dimensioned at 35' or less. Staff inquired about the size of the parking spurs and was told that the additional size (e.g., 35 and 45 feet) was needed to allow parking for two vehicles per campsite and/or to accommodate vehicles with trailers, but that in no case would the number of tent camping sites be reduced. Similarly, DPR informed staff that widening of the campground loop roads and lengthening of the parking spurs will facilitate larger recreational vehicles up to 45 feet in length, but that the number of recreational vehicle hookups will not be expanded beyond the existing number. In any case, there is no evidence to suggest that DPR intentionally withheld information on the amount of tent camping or the size of the proposed parking spurs



with the renovated campground alignment as it was provided with the application materials, and accurately represented to the Commission at the appeal hearing.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information given by the applicant, that if correct or complete information had been supplied, would require additional or different conditions of approval or require the Commission to deny the application.

5. Coastal Views

The City lists as potential grounds for revocation false and incomplete information on coastal viewshed impacts. The request states, "based on information supplied by DPR, the staff report to the Commission indicated that the campground and day use improvements would not be visible from [South Bay Boulevard] because they were screened from view by vegetation." It points out that several trees had been removed along the bayfront and that the campground is in full view.

DPR provided to the Commission the project plans and associated mitigation for review prior to the Commission hearing on this item. Commission staff was aware of the previous permits issued to DPR approving the removal of trees along the bayfront and determined that due to distance and vegetation cover, the project would not be visible from State Highway 1 or from South Bay Boulevard. DPR staff supplied accurate information regarding tree removal and revegetation in the area. Based on that information Commission staff concluded that there would be no significant adverse impacts on coastal views to and along the coast. Thus, there was no inaccurate, erroneous, or incomplete information provided by the applicant.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information given by the applicant, that if correct or complete information had been supplied, would require additional or different conditions of approval or require the Commission to deny the application.

6. Tree Removal

The City of Morro Bay contends that false, incomplete, and misleading information regarding the removal of Monterey pines and Cypress trees is grounds for revocation of the coastal development permit. They contend that statements made at the Commission hearing regarding the existing number of trees and the number of those proposed to be cut, intentionally misled the Commission. At the Commission's June 16, 2003 hearing, Parks representative Jim Quayle stated there were roughly 850 trees within the development envelope of the campground and that with the proposed removal of 74 trees, over 91% of the existing tree canopy would remain. He also noted that the majority of tree removal would occur in the rear of the campground and in the windrow near the new entrance station.

The City contends that these figures are inaccurate because trees were cut between the time the campground was surveyed for trees and the Commission hearing. The City has provided a tabulation of the numbers of trees within the campground area as of January 2004, which shows there to be fewer trees than that reported to the Commission. They claim that since the time of the Department's mapping nearly 120 trees have been felled. The implication of this is that the information provided by Mr. Quayle at the Commission meeting was intentionally inaccurate and intended to mislead the Commission. Further, they argue that if the tree removal approved by A-



3-MRB-03-043 is considered, the percentage figures on retained canopy reported by Mr. Quayle to the Commission is also inaccurate and intentionally misleading.

During its review of the appeal, Commission staff was made aware that DPR felled some trees within the project boundary since the area was mapped, in accordance with a permit granted by the City to remove dead, hazardous and unsafe trees for public safety purposes. DPR also felled trees in the Day Use area under a permit granted by the Commission to renovate the day use facilities. Accordingly, Commission staff worked with DPR staff to obtain updated information regarding the number of existing trees and trees proposed for removal, and to provide accurate figures to the Commission on this issue. No evidence has been provided that Parks intentionally provided inaccurate information regarding the number of trees to be removed or the percentage of forest canopy to be retained. Moreover, the alleged discrepancy in tree removal figures would not have affected the Commission's decision because the Commission-approved project includes special conditions protecting the sensitive habitat areas and mitigation measures to replant approximately 1,200 trees and shrubs from a palette of native species. Finally, Mr. Quayle's statements characterizing the tree removal as occurring primarily in the rear of the campground and in the windrow are accurate.

In sum, the information provided by the applicant indicates that there are numerous trees within the Morro Bay State Park campground, most of which will be retained. The approved campground renovation with associated mitigation will protect and enhance park vegetation. Furthermore, there is no evidence to show that DPR intentionally withheld information or misled the Commission.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information given by the applicant, that if correct or complete information had been supplied, would require additional or different conditions of approval or require the Commission to deny the application.

7. Day Use Area

In the summary of contentions, the City broadly contends the applicant submitted inaccurate, erroneous and incomplete information to the Commission in regard to information on the Day Use Area, but didn't follow-up their contention with any specific allegations of incomplete or inaccurate information in the body of the revocation request. They did note that the project had been parsed from the campground renovation project and therefore the full impacts of the "complete" renovation were not considered.

The Day Use Area project was processed separately from the campground renovation because it lies within the Commission's retained permitting authority, whereas the campground renovation fell within the City's permitting authority. In any case, there cannot be any grounds for revocation based on data provided to the Commission for the Day Use Area, because the Day Use Area renovation was not the subject of coastal development permit A-3-MRB-03-043.

8. General Plan Consistency

The final contention of the City is that DPR provided false, incomplete, and misleading information to the Commission regarding consistency with the Morro Bay State Park General Plan. In its report to the Commission, staff paraphrased the applicant's position that the project is consistent with goals outlined in the Morro Bay State Park General Plan including "reducing



invasive exotic plant species in the unit.” The City contends that this goal only applies to limited portions of the State Park unit, and excludes the developed area of the campground.

The Morro Bay State Park General Plan was reviewed and approved by the City of Morro Bay in March 1988. Staff referenced the Morro Bay State Park General Plan in its evaluation of the proposed renovation project. Some of the general land use goals envisioned for the campground included:

Renovate or replace all existing campground facilities;

Relocate the entrance station to the west side of the campground;

Remove aging trees and plant understory landscaping to improve privacy between campsites.

The General Plan also provided guidance on protection and enhancement of the local plant communities. In the discussion of vegetation management, the General Plan (GP) found that “the natural plant communities at Morro Bay State Park have been affected by urbanization, road construction, golf course and marina development, and displacement by exotic species.” The GP findings conclude that the end result has been reduced numbers and restricted distribution of native species. The associated policy objective indicates, “the department shall work toward restoration and perpetuation of native vegetation at Morro Bay State Park.” Similarly, in the findings on Exotic Plant Species, the GP notes, “the perpetuation of native plant communities is dependent on the control and removal of exotic species.” The relevant policy statement requires the department to “pursue a long-range objective of controlling or eliminating exotic plants, including hoary cress, Monterey pine, Monterey cypress, eucalyptus, and ice plant, in undeveloped areas of the Park.” In the findings on Eucalyptus trees, the General Plan notes that Eucalyptus are present adjacent to the marsh along Lower State Park Road and is reproducing in these areas, displacing the native coast live oak woodland and coastal sage scrub vegetation. It further states that the Eucalyptus understory is relatively sterile and precluding native seedling establishment. The relevant policy statement requires the department to remove Eucalyptus trees and seedlings from these areas and to revegetate with native species. Revegetation is required to be coordinated with tree removal, and tree removal is required to be phased as to avoid disruption of natural, cultural, scenic, and recreational values.

The City is thus incorrect regarding consistency with the General Plan. Further, the Commission was aware of the GP policies outlined above and the contentions laid out in DPR’s appeal when it acted on the coastal development permit. Thus, there was no false or misleading information provided to the Commission.

Therefore, Staff recommends that the Commission find there was no inaccurate, erroneous or incomplete information given by the applicant, that if correct or complete information had been supplied, would require additional or different conditions of approval or require the Commission to deny the application.

9. Conclusion

Staff has evaluated the City of Morro Bay claim that there are grounds for revocation based on the submittal of inaccurate, erroneous and incomplete information with respect to inadequate noticing, mischaracterization of historic resources, presence of sensitive species, impacts on



tent camping, coastal view impacts, tree removal, Day Use area impacts, and consistency with the Morro Bay General Plan. There is no evidence that DPR intentionally supplied misleading or incomplete information or that even if they had, this lack of information or inaccurate information would not have caused the Commission to change their position or deny the project. Likewise, there is no evidence that DPR failed to provide adequate notice or that even if they had, the views of those not noticed would have caused the Commission to change their position or deny the project.

Therefore, the request to revoke Coastal Development Permit A-3-MRB-03-043 is denied.

